

Institute of Advanced Legal Studies

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Use of Legislative section headings to achieve
effectiveness: Comparative Study of Rwandan and
Australian Jurisdictions

LLM 2011-2012

LLM in Advanced Legislative Studies (ALS)

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INTRODUCTION

Legislation is both crystallization and declaration of rights, privileges, duties, and legal relationships and a form of communication.¹ Therefore, when drafting a piece of legislation, drafters have to be certain of its effectiveness. They have an obligation to communicate clearly and efficiently with their clients, their colleagues, their opponents and the general public,² as well as all readers of the piece of legislation. With this aim, plain language writing is the practice of writing in clear, precise and simple style.³ There are many forms of plain language, not just one. What is appropriate in one context may be inappropriate in another, and it takes time to develop the necessary sensitivity to the problems of the readers of legislation. Those who try to write in plain language find that their skills develop with practice, and a natural style gradually emerges.⁴ If they look back over documents they have drafted in the past, they can see the change in their writings, and they find that their drafts become clearer, unambiguous and easier to read.⁵

Many advocates of plain language encourage legal drafters to use modern standard language. This language may be used in legislation without loss of legal precision.⁶ Modern language is therefore preferable to traditional language. Legislation can be drafted in modern and standard language, covering not only obvious points such as language and punctuation but also important factors such as structure.⁷

However, one of the more recent criticisms of plain language is that it looks only at words on the pages, and ignores other things that make documents difficult to read, use and understand.⁸ The fact that Acts of Parliament are legal documents marks them

¹ Reed Dickerson, *Materials on Legal Drafting* (St. Paul, Minn.: West Publishing Co 1981) 19.

² Michele M Asprey, *Plain Language for Lawyers* (3rd edn, The Federation Press 2003) 8.

³ *Ibid* 11.

⁴ *Ibid* 12.

⁵ *Ibid*.

⁶ Peter Butt and Richard Castle, *Modern Legal Drafting: A Guide to Using Clearer Language* (2nd edn, Cambridge University Press 2006) 231.

⁷ *Ibid* 5.

⁸ Asprey (n2) 13. See also St John Bates, 'Drafting by More than Words: The Use of Graphics, Labels and Formulae in Legislation' (March 2010) 01 Commonwealth Law Bulletin 107.

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off from other kinds of writing with which they are sometimes unfavorably compared. Drafters have to ensure to the best of their ability that what they write will mean precisely what they intended, even after it has been subjected to details and possible scrutiny. Legislation must therefore be simple, unambiguous, precise, readable and comprehensive. All this means that legislative drafting is not to be judged by normal standards of good writing.

The contents of legislation should be in a logical order, to enable its text to be obvious, attractive, read and used quickly and effectively, from the reader's perspective and not from the drafter's perspective. Each clause, paragraph and whole structure of the piece of legislation should be presented in a way that is sensible, attractive and comprehensible to the reader.⁹ There are different approaches which can be used by the drafter, but the aim is the same: to simplify the legislation by removing unnecessary obscurity and complexity.¹⁰

There are many ways to improve the accessibility and understandability of legislation. From the drafting point of view, some of them are no more than common sense; others are the result of research into document design; but all help improve the accessibility and understandability of legislation.¹¹ In line with the effectiveness of legislation, the structure with headings and cross headings is an important tool for the reader.

It is obvious that headings and cross headings in any piece of legislation, can help readers find what they are looking for. They can also help them understand what they are about to read.¹² Some readers of legislation are interested only in the parts of legislation that relate to their interests. They want to find those parts as quickly as possible and get what they want to know. By using headings and cross headings, the drafter effectively takes the role for which an advisor would be needed in guiding

⁹ Butt and Castle (n6) 170.

¹⁰ Anthony Watson-Brown 'In Search of Plain English – The Holy Grail or Mythical Excalibur of Legislative Drafting' (2012) 33.1 Statute Law Review 7,15.

¹¹ Butt and Castle (n6) 173.

¹² Asprey (n2) 254.

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readers to the relevant provisions.¹³ However, headings and cross headings can only do that if they are meaningful.

In the same context, section heading is also used as a guide for the reader of legislation. It steers the reader to an appropriate section, and it is supposed to briefly indicate the contents of that section. In drafting section headings, the aim should be to prevent users having to read more of legislation than they need in order to answer the questions which brought them to the piece of legislation, and to ensure that they do read all that is necessary. If section heading does that, it saves the reader time and prevents confusion in the use of that piece of legislation. In turn, it benefits the administrators of legislation by reducing the amount of their time spent on answering queries about the legislation or correcting interpretation of it.¹⁴ It also goes towards adhering to the principle that the legislation should be accessible and comprehensible to all; an ideal to be continually pursued if we are to accept the maxim that ignorance of the law is no excuse.¹⁵

Section headings used in different pieces of legislation within different jurisdictions are subset of other legislative headings used in those jurisdictions even though they are seen to be redundant. They are subject to contextual differences to the history of each jurisdiction, and the type of legislation involved. They are easily identifiable in different Commonwealth legislation.

The aim of this study is to prove that the use of section headings in legislation contributes to achieve effectiveness by helping readers of legislation find what they need to know faster, and understand it more easily. To prove the hypothesis, this study uses a comparative methodology by applying the following criteria from Nick Horn, in his article: 'Legislative Section Headings: Drafting Techniques, Plain Language, and Redundancy'.¹⁶ The criteria are as follows: 'Primary Users and Official Interpreters';

¹³ Asprey (n2) 254.

¹⁴ Gordon Stewart 'Legislative Drafting and Marginal Note' (1995) 16 Statute Law Review 21.

¹⁵ Ibid 21.

¹⁶ Nick Horn 'Legislative Section Headings: Drafting Techniques, Plain Language, and Redundancy' (2001) 32 Statute Law Review 186.

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‘Assistance for Primary Users’; and ‘Assistance for Official Interpreters’.¹⁷ The study applies those criteria to Australian and Rwandan jurisdictions.

Horn applied these criteria in order to test how section headings are used in Australian legislation. He analyzed different techniques of section headings as used in Australian legislation in order to show how they assist, or at least affect access to interpretation of the law for two classes of readers of legislation: primary users and official interpreters. He intends to show that both classes of readers of legislation include all audiences of any piece of legislation. By this research, we make a comparative study on the use of section headings in Rwandan legislation and Australian legislation in order to conclude that they can be used to achieve effectiveness of legislation in any legal system.

The analysis of those criteria is preceded by a comparison part on the use of section headings in Australia and in Rwanda. It makes the comparison on the use of this legislative drafting technique in both jurisdictions in the context of the general structure of legislation in those jurisdictions.

The analysis of the criterion on ‘primary users and official interpreters’ differentiates between ‘Primary Users’ and ‘Official Interpreters’ as two classes of audiences of legislation. In this regard, the analysis aims to find out if these groups cover all audiences of any piece of legislation in Australia and in Rwanda or not. Those groups are supposed to be affected by the use of section headings or at least they are expected to read legislation. The effect of the use of section headings is analyzed in the context of principles of plain language and interpretation of legislation.

The analysis of the criterion on ‘primary users’ states how the use of section headings in its empirical evidence and in three dimensions, assists primary users of legislation. Those dimensions are as follows: vertical dimension or the section heading with the content of the related section; horizontal dimension or the section heading in the context of other section headings of the piece of legislation; and the use of section heading in the form of a question. The analysis of this criterion makes a balance on the restrictions of the use of section headings and their advantages to readers of legislation.

¹⁷ Horn (n16)190-207.

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The analysis of the criterion on ‘official interpreters’ states how section headings can assist official interpreters. At this point, the analysis also mentions the role of the legislative translator in multilingual legal systems such as Rwanda. It shows how when translating a piece of legislation, the translator of a multilingual legal system interprets the meaning of the piece of legislation, and plays the role which can be compared to the one of the official interpreter.

Some reasons behind the choice of Australian and Rwandan jurisdictions include the fact that legislation of Rwanda and legislation of Australia have almost similar general structures. Additionally the both jurisdictions are members of Commonwealth; however, their respective legal systems and history about the use of legislative section headings are quite different. Since 2009, Rwanda is a member of Commonwealth, and its legal system is mostly Civil Law recently acquiring Common Law aspects, thus moving to a hybrid of both legal systems. Therefore, this study expects to contribute in the area of the use of section headings as a legislative drafting technique which seems not to be explored by many advocates of plain language.

The aim is to make this study practical. With this regard, as far as the context of the analysis requires, we use the examples of section headings from different pieces of legislation of both Australian and Rwandan jurisdictions. Before the comparison of the use of section headings in Australia and in Rwanda, it is constructive to give a brief history of the kind of legislative drafting technique in each of both jurisdictions.

1. Brief History of Legislative Section Headings in Australia and in Rwanda

The use of section headings in Australia has a long history. In this jurisdiction, like in other ancient Commonwealth jurisdictions, the use of section headings in legislation stated life as explanatory aids to legislation that were not included in the text of bills under Parliamentary consideration. Headings were added to the Acts after enactment,

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in the form of notes in margin.¹⁸ For this reason, the Acts Interpretation Act 1901 of Australia about the section headings refers to section headings as ‘marginal notes’.¹⁹

It must be remembered that in the beginning of its use, each ‘section’ was a separate enactment. Consequently, the marginal notes were a way of breaking down what could be extremely long pieces of legislation into shorter sequences.²⁰ Generally, the numbering and descriptive labeling of sections was proposed over 150 years ago by Jeremy Bentham and Arthur Symonds.²¹

Bentham energetically advocated the numbering of sections and parts of legislation and urged the inclusion in legislation of ‘all such helps to intellection as can be found applied to any other subject’.²² In his letter to C.P Thomson in 1838, President of the Board of Trade (England), Symonds who was the member of the Board of Trade more explicitly encouraged the use of descriptive headings in the form of marginal notes.²³

When Sir Henry Thring was appointed as the first Chief Parliamentary Counsel in England in 1869, he set about establishing a consistent set of drafting principles, both structural and grammatical, in the spirit of plain language reformers who had gone before.²⁴ In 1901, Thring’s principles were reiterated by his successor, Sir Courtenay Ilbert, commanding that ‘each Bill should have an arrangement made up from marginal notes’; and noting in addition that marginal note often supplies a useful test of whether a subject should be covered in more than one clause.²⁵

The Australian legal system remains strongly influenced by those principles. As a result, section headings are subset of other legislative headings, including Chapter,

¹⁸ Horn (n16) 189.

¹⁹ See the Acts Interpretation Act 1901, s 13(3) before its amendment by the Acts Interpretation Amendment Act 2011.

²⁰ Horn (n16) 189.

²¹ W.S. Holdsworth, *A History of English Law*, (Vol.11, London: Methuen and Co. Ltd. 1938) 337, cited by Stewart (n14)23.

²² Jeremy Bentham, ‘Of Nomography; or the Art of Indicating Laws’, in J.Bowring (ed.), *The Works of Jeremy Bentham*, Vol.3 (Edinburgh: William Tait 1843) 266; cited by Stewart (n14)23.

²³ Stewart (n14) 25.

²⁴ Spring Yuen Ching Fung and Antony Watson-Brown ‘Traditional Drafting in Common Law Jurisdictions’ (1995) 16 Statute Law Review 167, 171-173.

²⁵ Ibid 174.

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Part, Division, and Subdivision, which constitute the table of contents of the pieces of legislation. The Acts Interpretation Act 1901 of Australia as amended does not mention expressly the section heading while it makes the part to the Act 'any heading to a Chapter, Part, Division or Subdivision appearing before the first section'.²⁶ However, the section heading is one element of the general structure of the Australian Federal legislation.

The history of the use of section headings in Rwanda is short. Rwanda has no Interpretation Act. Therefore, section headings were explicitly provided and used for the first time in Rwandan legislation in 2006 with instructions of Minister of Justice No 01/11 of 14/11/2006 relating to the drafting of the texts of laws. The instructions provide that 'any draft legislation must indicate before each Article²⁷ a heading reflecting the idea which is developed in it'.²⁸ Each Article of instructions as a matter of fact has a heading.

Like in Australian legal system, section headings in Rwandan legislation are a subset of other legislative headings, including Part, Volume, Title, Chapter, Section, and Subsection, which constitute the table of contents of any piece of legislation.²⁹ The structure of the legislation of the Rwandan legal system must be understood in line with the history of the Country. It is inherited from the Belgian Civil Law system which itself comes from the French legal system. Legislation of Belgium is very similar to that of France, with Belgium adopting the Napoleonic Code, which governs French society.³⁰ For many years, the Rwandan drafter had the intention of copying or using the French legislation structure as drafting precedents.³¹

²⁶ See the Acts Interpretation Act 1901 as amended by the Acts Interpretation Amendment Act 2011, s 13(2) (d).

²⁷ Rwandan legal system uses 'Article' instead of 'Section' used in Australia and in some other Common Law jurisdictions. In this study, 'Section Heading' includes 'Article Heading' in Rwandan jurisdiction.

²⁸ See Article 2 (3) of Instructions of Minister of Justice No 01/11 of 14/11/2006 relating to the drafting of the texts of laws, Article 2(3).

²⁹ The table of contents is provided by Instructions No 01/11 of 14/11/2006 (n28), Article 1 (1); for the structure of laws, see the Instructions, Article 2 (1).

³⁰ For the importance of Codes in France, see Francis Bennion, 'How They Do Things in France' (1995) 16 Statute Law Review 90, 96.

³¹ For the intention of the drafter from small jurisdiction in the use of precedents from legislation passed in the large jurisdictions, see T.W. Cain, 'The Legislative Drafterman in a Small Jurisdiction' (1990) 11 Statute Law Review 77, 84; see also Ranjit Hewagama, 'The Challenges of Legislative Drafting in Small Commonwealth Jurisdictions', Vol. 36 (March 2010) 1 Commonwealth Law Bulletin, 117.

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Since 2009, Rwanda has been a Commonwealth member³² and its Civil Law legal system is now undergoing a transformation from purely Civil Law to a merging of Civil Law and Common Law.³³ On 26th May 2003, Rwanda adopted a new Constitution.³⁴ With the adoption of the use of section headings since Instructions No 01/11 of 14/11/2006,³⁵ the Constitution as amended to date is hybrid in structure. It contains some section headings subject to latest amendments. Any draft of Rwandan law must contain section headings to facilitate all users of legislation.

The following figure (figure 1) shows the general structure of Australian legislation and Rwandan legislation. It is therefore important to note that these structures are managed depending on the length and complexity of any piece of legislation.

Australia	Rwanda
Chapters	Parts
Parts	Volumes
Divisions	Titles
Subdivision	Chapters
(Schedules)	Sections
	Sub-sections
	(Schedules)

Figure 1: General Structure of Legislation in Rwanda and Australia

³² See the Resolution of Commonwealth Heads of Government Meeting 2009 <http://en.wikipedia.org/wiki/Commonwealth_Heads_of_Government_Meeting_2009> accessed 11 July 2012.

³³ Eunice Musiim 'Rwanda's Legal System and Legal Materials' GlobalLex <<http://www.nyulawglobal.org/globalex/rwanda.htm>> accessed 11 July 2012.

³⁴ See the Constitution of the Republic of Rwanda of 04 June 2003 as amended to date.

³⁵ See Instructions No 01/11 of 14/11/2006 (n28), Article 2 (3).

2. Section Headings in Rwanda and in Australia

According to Instructions No 01/11 of 14/11/2006, section headings in Rwandan legislation are bound to be brief and descriptive. Contrary, in Australia, the Acts Interpretation Act 1901 as amended by the Acts Interpretation Amendment Act 2011 does not indicate the form in which section headings must be drafted. Consequently they take different forms in different pieces of legislation. They are sometimes descriptive, summarizing, in question form or in sequences. In both countries, section headings with other headings of any piece of legislation form a table of contents of the piece legislation.

2.1. Descriptive and Summarizing Section Headings and Section Headings in Question Form

By providing that ‘any draft legislation must indicate, before each Article a heading reflecting the idea which is developed in it’, Instructions No 01/11 of 14/11/2006 ³⁶ in Rwandan jurisdiction are in pursuit of two things. Firstly, section headings must be descriptive (informing the reader on the subject of a section). Secondly, they must not be summarizing (telling the reader what the section says about that subject). On the contrary, the Acts interpretation Act of Australia does not give the indication of the form in which section headings must be drafted.³⁷ Therefore, some of them are descriptive while others seem to summarize the content of the section or in question form. However, the description of section headings and their brevity in both Rwandan and Australian jurisdictions are sometimes incompatible, as in the following examples:

³⁶ See Instructions No 01/11 of 14/11/2006 (n28), Article 2 (3).

³⁷ See the Acts Interpretation Act 1901 as amended by the Acts Interpretation Amendment Act 2011.

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- Article 50:** Modalities for the execution of community service as alternative penalty to imprisonment ³⁸ (Rwanda).
- 31B.** Rights of option holder where the new plan of management is the same or substantially the same as the former plan of management ³⁹ (Australia).

These examples of section headings are descriptive, but not brief. The Australian drafter also uses the form of summary and the form of question, like in the following examples:

- 71.** Director may intervene in court proceedings.⁴⁰
- 116.** When is levy due?⁴¹

In Australia, the descriptive and summarizing section headings, and section headings in the form of a question can be used in sequences. The Australian drafter uses this drafting technique in many pieces of legislation.

2.2. Use of Section Headings with Sequences in Australia

The drafter of Australia developed strategic arrangements of section headings by the use of sequences. Horn classifies those sequences: divided headings-internal sequences, divided headings-parallel structures, divided headings-reinforcement of formal structures.⁴² The objective in this study is not to analyze all those techniques of arrangement of section headings in sequences. However, it would be important to indicate that they have the common aspect: the repetition of words or group of words in each section or group of sections which compose the Part, Chapter, Division or Subdivision, depending on the structure of the concerned piece of legislation. This study

³⁸ Organic Law N° 01/2012/OL of 02/05/2012 Instituting the Penal Code, Article 50 (Rwanda). (The heading of Article 50 is composed by 12 words while the content of the Article is composed by only 19 words).

³⁹ Fisheries Management Act 1991, S31B-Div 4A-Part 2 (Australia).

⁴⁰ Fair Work (Building Industry) Act 2012.

⁴¹ Fisheries Management Act 1991.

⁴² Horn (n16) 195-200.

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refers to those techniques as illustrations showing the effect of such repetition for the readers of pieces of legislation within which those drafting techniques are used. The following figure (figure 2) is an example of section headings with sequences in Australia:

Part 5.9. Registrar of Personal Property Securities

- 193. Guide to this part
- 194. Registrar-establishment of office
- 195. Registrar-functions and powers
- 196. Registrar-acting appointments
- 197. Registrar-delegation
- 198. Registrar-resignation
- 199. Registrar-termination
- 200 Deputy Registrar- establishment of office
- 201 Deputy Registrar- functions and powers
- 202. Deputy Registrar- resignation

Figure 2: Personal Property Securities Act 2009 (Divided Headings-Parallel Structures)⁴³

2.3. Section Headings in Table of Contents

In both Australia and Rwanda, section headings and other headings of a piece of legislation form the table of contents of the piece of legislation. In Australia the website is set up so that provisions of a piece of legislation can be accessed via the links in the table of contents.⁴⁴ The website of the Prime Minister's Office responsible for publishing legislation in Rwanda does not provide this facility.⁴⁵ However, through the website, every piece of legislation starts with a table of contents, through which the reader can locate the Article that contains specific information. To facilitate the readers, another

⁴³ Horn (n16) 198.

⁴⁴ See <<http://australia.gov.au/>>

⁴⁵ See <<http://www.primature.gov.rw/>>

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website has been made by the Ministry of Justice of Rwanda in collaboration with the National University of Rwanda. Through that website, readers can access legislation via the links in the table of contents like in Australia.⁴⁶

3. Primary Users and Official Interpreters

Section headings are said to assist, or at least to affect access and interpretation of the legislation. According to Horn, readers of legislation are in two classes: primary users and official interpreters.⁴⁷ *Primary users* are those whose behavior is sought to be changed by the piece of legislation or rather (most of them) those who need to access to a piece of legislation so as to act on behalf of those whose behavior is directly sought to be changed by the piece of legislation.⁴⁸ For example, the primary users of law about occupational health and safety would be trade unions, employer associations and their legal advisers, as well as those workers and individual employers (if any) who access the law in their own right.⁴⁹ *Official interpreters* are those whose interest in legislation is either to administer or implement it or to adjudicate disputes about its meaning in administrative or judicial forums.⁵⁰ In other words official interpreters and primary users are audiences of legislation. The following analysis aims to clarify whether this classification include all audiences of legislation within Rwandan and Australian jurisdictions.

3.1. Audiences of Legislation

Many advocates of plain language made the analysis of audiences of legislation. When talking about audiences of legislation, Sullivan does not show the difference between 'use' and 'interpret'. She focuses on the meaning and interpretation of legislation,

⁴⁶ See <www.amategeko.net>

⁴⁷ Horn (n16) 190.

⁴⁸ Horn (n16) 190.

⁴⁹ Ibid.

⁵⁰ Ibid.

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making a difference between primary and official interpreters.⁵¹ At the end of his analysis, Horn supports Sullivan's idea when he concludes that 'all reading is interpretation, and all interpretation is just reading'.⁵²

Jackson brings another approach of audiences of legislation. In his analysis, he identifies the following semiotic groups within the legal system: Drafters, Politicians, Judges, High Street Lawyers, and numerous Commercial, Professional and Trade Unions Agencies that act as translators of legislation for semiotic groups outside the legal system.⁵³

Berry identifies the audience for legislation as 'all who will potentially read the legislation or whose activities it will control'⁵⁴. He takes it for granted that these different groups are to be addressed simultaneously, and the challenge for the drafter is finding a voice that communicates successfully with all of them.⁵⁵

For Hant, 'legislation should be both accessible and understandable to the ordinary man'. This is understood as an ordinary person of ordinary intelligence and education, who has (or should have) a reasonable expectation of understanding legislation and of getting the answers to the question he or she has.⁵⁶ Murphy simply says that 'the ordinary people are and should be the intended audience'.⁵⁷

The list on audiences' analysis of legislation can be long. This is evidence that the audience's analysis is crucial in legislative drafting. The challenge for the drafter is to identify for whom the message of his or her draft is addressed to. The analysis depends on the context and the subject matter of the piece of legislation.

⁵¹ Ruth Sullivan, 'Some Implications of Plain Language Drafting' (2001) 22 Statute Law Review 175, 177-179.

⁵² Horn (n16) 206.

⁵³ Bernard S. Jackson, 'Making Sense in Law: Linguistic' (1950) Psychological and Semiotic Perspectives (1950) Liverpool: Deborah Charles Publication 5-26, cited by Sullivan (n49) 145.

⁵⁴ Duncan Berry, 'Audience Analysis in the Legislative Drafting Process' (June 2000) The Loophole 61, 62.

⁵⁵ Berry (n54) 62.

⁵⁶ Brian Hant, 'Plain Language in Legislative Drafting: Is it Really the Answer?' (2001) 22 Statute Law Review 25, 27.

⁵⁷ D. Murphy, 'Plain Language in a Legislation Drafting Office' (1995) 33 Clarity, 3.

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From drafting point of view, we agree with the Horn's conclusion on 'reading' and 'interpretation'.⁵⁸ The aim that all drafters aspire is to draft legislation so as to minimize the need for disputes about interpretation. Therefore, the distinction between 'use' and 'interpretation' should be questioned. Far from being expendable, interpretation is inevitable. A fixed meaning is generated each time the text is read, in the context in which the text is used. This action of generating meaning from a text constitutes an interpretation, no matter whether legislation is being read by a 'primary user' or an 'official interpreter'.⁵⁹ When drafting section headings, the drafter has to ensure that his or her draft will be given the meaning that he or she intends. In particular, section headings must be used with the target or primary audience (or primary interpreter). Moreover, when there is an issue of official interpretation, sections headings also serve as guides for official interpreters.

In Australian jurisdiction within which legislation is drafted, passed and published in one language (English), the distinction of primary and official interpreter includes all audiences of legislation. However, in the context of the effectiveness of the use of section headings in a multilingual legal system like the Rwandan legal system (within which the intervention of the legislator is required), the distinction of primary and official interpreter may exclude the legislative translator.⁶⁰ The translator is not an official interpreter. Indeed his or her behavior is not necessarily sought to be changed by the piece of legislation. However, when translating a piece of legislation, he or she makes the 'language of law'. He or she creates law as legislative making.⁶¹ Therefore, in multilingual legal system where the drafting version must be translated, the translator acts as a bridge between the drafter and other audiences of a piece of legislation. In

⁵⁸ Horn (n16) 206.

⁵⁹ Sullivan (n51)190.

⁶⁰ See Constitution of the Republic of Rwanda of 04 June 2003 as amended to date Article 5 (for three Official Languages) and Article 93 (for the use of three Official Languages in legislation).

⁶¹ Barbara Pozzo and Valentina Jacometti, *Multilingualism and the Harmonisation of European Law* (Kluwer Law International 2006) 89. (For the role of translator in interpreting legislation, see on pages 37-38).

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that context, when translating a piece of legislation, section headings can help the translator to get the meaning of the section and the whole piece of legislation.⁶²

When drafting section headings, drafters must concentrate on identifying the legal messages to be enacted by the legislature. They have a duty of finding appropriate words to use in section headings and put them in appropriate form, to express those messages, and anticipate how those words will be read. Interpreters focus on the meaning of the text, what legal messages were intended, and what assumptions the drafters of the text would have made about the interpretation.⁶³ In other words, drafters and all audiences of legislation are preoccupied with the same things. If the meaning is the same for everyone, then the fixed words of the piece of legislation will deliver the same message to drafters, translators and any audience of legislation. Different audiences bring different levels of competence in different contexts to their reading. Drafters should also be aware of this reality when using section headings in legislation. With the context of interpretation by every reader or audience of legislation in mind, it is important to briefly address the section headings in the context of plain language.

3.2. Section Headings and Plain language

In fact, no piece of legislation can be regarded as clear and understandable until readers' performance proves it.⁶⁴ Simamba proposes how to examine the implication of heading on legislation. According to him, the general rule is that where the provision is clear, the heading does not affect the clear meaning of the provision. However, where the meaning of the provision is not clear, one may read it in conjunction with the heading and make the two consistent if possible.⁶⁵ These rules are in the context where the section headings are as guide and not a part of legislation. In the same logic,

⁶² In this study we prefer the use of 'readers' or 'audiences' of legislation, and we refer to 'users' or 'interpreters' when the analysis and the compliance with other others require their use.

⁶³ Sullivan (n51) 178.

⁶⁴ Martin Cutts, 'Plain English in the Law' (1995) 17 Statute Law Review 50, 51.

⁶⁵ Bilika H Simamba 'Should Marginal Notes be Used in the Interpretation of Legislation?' (2005) 26 Statute Law Review 125, 128-129.

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Maxwell states that ‘whatever the assistance which it may render in construction, section headings cannot stand logically with the exclusion of marginal notes’.⁶⁶

Collectively, section headings are the starting point for anyone using the piece of legislation to find the answer to a problem. Individually they indicate whether a particular section will hold the answer to their question.⁶⁷ Further, that theory should hold true for all readers of the piece of legislation, regardless of whether official or not. Section headings help all readers find their way around the piece of legislation more quickly.⁶⁸ Consequently, as Klongold states, in line with the language to be used by the drafter in section headings, ‘fairness demands that people be informed of benefits or obligations in language they can understand.’⁶⁹ When people do not know the law, or misunderstand it, they are less likely to comply with it or to exercise their rights under it.⁷⁰

Section headings have been described as a short indication of the content of the section, and an aid to quick reference for a short document and do not have to affect the interpretation of the legislation.⁷¹ Some years ago, Thornton argued that ‘the object of marginal note (or section heading) is to give a concise indication of the content of the section’.⁷² In this context, a reader has only to glance through the section headings in order to understand the framework and the scope of a piece of legislation, and enabling him or her to direct his or her intention quickly to the part of the piece of legislation which he or she is looking for. However, section headings in Rwanda and Australia are parts of legislation. The proof of this assumption is that they are sometimes amended like other provisions of legislation. Indeed, if the content of the section is amended, its amendment can affect the heading of the section.

⁶⁶ See P St J Langan, *Maxwell on the Interpretation of Statutes* (12th edn, Bombay N.M. Tripathi Ltd 1976) 11.

⁶⁷ Stewart (n14) 44-45.

⁶⁸ Ibid.

⁶⁹ S Krongold ‘Writing Laws: Making Them Easier to Understand’ (1992) 24 *Ottawa Law Review* 495, 501.

⁷⁰ Ibid.

⁷¹ Piesse, *The Elements of Drafting* (9th edn, 1995 The Law Book Company Limited) 112.

⁷² G. Thornton, *Legislative Drafting* (3rd edn, 1987 London: Butterworth) 142.

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To achieve its role, a section heading must be drafted with respect of principles and techniques of plain language. With this regard, the section heading must be accurate. Its language must be consistent with that of the section to which it refers. Bearing in mind the inaccuracy of the distinction between 'primary users' and 'official interpreters', we make the emphasis on how the drafter can achieve the effectiveness of legislation by the use of section headings in the context which does not exclude any audience of legislation.

4. Assistance for Primary Users

Horn's analysis about the assistance of section headings for primary users in Australia focuses upon four elements. Firstly, he analyzes this assistance using empirical evidence. Secondly, he uses three dimensions of the use of section headings: vertical dimension or the section heading and the content of the section; horizontal dimension or the section heading in the context of other section headings; and the use of section headings in the form of question as fourth dimension. Our analysis of those four elements aim to show whether they can be taken into consideration in order to demonstrate how the use of section headings in Rwandan and Australian jurisdictions help primary users to find what they want in legislation and understand it.

4.1. Empirical Evidence

Accepting the premise that the use of section headings can assist primary users to understand the piece of legislation, Horn bases his analysis on empirical evidence carried out with students in the field of educational document design,⁷³ and tests with experienced users of legislation. His analysis provides an objective evidential support for the significant assistance that headings can give to primary users of legislation.⁷⁴

⁷³ For more discussion of usability testing, see A.D. Wright, 'The Value of Usability Testing in Document Design' (March 1994) *Clarity* 30, 24.

⁷⁴ Horn (n16) 191-192.

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With the same aim, the study of Hartley and Trueman concludes from a series of experiments with high school students that headings can be an aid for understanding the content of the text.⁷⁵ Kools supports these conclusions, finding that search times are faster for text with headings than for text without headings,⁷⁶ while Wilhites's study suggests that headings are particularly effective for readers with prior knowledge of the subject matter of the text.⁷⁷

Klongold confirms the assistance of section headings for primary users to understand legislation. However, her analysis on the topic does not offer empirical evidence in the form of user testing or the like.⁷⁸ Focusing on general research on linguistics and communications in the context of plain language and interpretation, Sullivan accepts this premise without citing objective proof.⁷⁹

Stewart's user tests on forms of legislative section and subsection headings do not examine this basic premise. However, he made hard evidence about the use of legislative text with section headings, and conducted a number of tests with experienced users of legislation on the effect of headings in the form of questions, and the effect of subsection headings. Unlike Hartley and Trueman, Stewart did not test for the effect of the presence of heading, as opposed to their absence. However, he found that there was significant increase of speed in locating relevant provisions in sections using subsection headings, as opposed to sections that did not use subsection headings.⁸⁰

Therefore, subsection headings can assist users to identify and understand the message of the text in a section. Consequently, and subject to different empirical research conducted by different research above, it seems reasonable to confirm as evidence that, section headings as used in Rwandan and Australian jurisdictions (or in

⁷⁵ Stewart (n14) 49-53; see also Sullivan (n53) 49-53.

⁷⁶ M Kools, 'The Effects of Headings in Information Mapping on Search Speed and Evaluation of a brief Health Education Text' (2008) *Journal of Information Science* 34, 842-43, Cited by Horn (n17) 192.

⁷⁷ S Wilhite 'Headings as Memory Facilitators: The Importance of Prior Knowledge' (1989) *Journal of Educational Psychology* 81, 116-17. Cited by Horn (n17) 192.

⁷⁸ Klongold (n69) 511.

⁷⁹ Sullivan (n51) 191.

⁸⁰ Stewart (n14) 49-53.

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any jurisdiction) can also assist them to identify and understand the message in the piece of legislation.

4.2. Section Headings in Three Dimensions

Horn identifies three dimensions in which the section heading operates: vertical dimension (directing the reader downwards into the section); horizontal dimension (directing the reader across the rest of the piece of legislation, via the table of contents), and the use of section heading in the form of a question.⁸¹ The following analysis focuses on each dimension in Australian and Rwandan legislation, stating how the drafter may consider it in order to fully engage the potential of section headings to assist primary users of legislation.

4.2.1. Section Headings in Vertical Dimension

In vertical dimension, assistance is offered to the primary user to understand the content of the relevant section of the piece of legislation.⁸² In Rwandan legislation, this role is supposed to be achieved by the description of the content of the section rather than by its summary.⁸³ In seeking to describe rather than summarize, the section heading should answer the question: 'what is this section about?' But not 'what does it say about it?'

However, finding that, there are some contexts where the descriptive section heading is not appropriate, the Australian drafter uses the format of summary which therefore indicates what the section says about. In this form of summary, the Australian drafter uses most of time 'may' and 'must' like in the following examples from the section headings of the Fair Work (Building Industry) Act 2012:⁸⁴

⁸¹ Horn (16) 192-202.

⁸² Ibid 193.

⁸³ See Instructions No 01/11 of 14/11/2006 (n28), Article 2 (3).

⁸⁴ Within the Fair Work (Building Industry) Act 2012, 'may' is used in 11 section headings while 'must' is used in 4 section headings.

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- 43. Director may request Independent Assessor to reconsider determination
- 49. Director must notify Commonwealth Ombudsman of issue of examination notice

This form of summarizing section headings seems to be a substantive clause of the section and is contrary to the principle of brevity. By this technique, the drafter of Australia tends to use long sentence. As Crabbe says, 'such a sentence in legislation makes a person raise his eyebrows'.⁸⁵ In the same context, Driedger notes: 'there is nothing discouraging as a long block of solid type'.⁸⁶ The reader finds long, complex sentences difficult to comprehend because they strain the limits of short-term memory.⁸⁷ It is also contrary to the principle of accuracy to be endorsed by all drafters.⁸⁸

A section heading in the form of summary as used in Australia seems to substitute for content of the section. In this situation its use may not have importance, and when it gives incomplete content of the section, it will suffer imprecision. Nevertheless, even though, they must be meaningful, they must not say as much as, or more than the clauses of the concerned section. In this case, they become repetitive or superfluous.⁸⁹

Like summarizing section headings, the descriptive section heading which is not brief tends to be substantive with the same danger as mentioned above. These kinds of section headings are also found in Rwandan and Australian legislation. The following are examples from Fisheries Management Act 1991 (Australia), and Organic Law n° 01/2012/ol of 02/05/2012 instituting the Penal Code (Rwanda):

⁸⁵ Mr. Justice V.C.R.A.C. Crabbe, 'The Legislative Sentence' (1989) Statute Law Review 79.

⁸⁶ E. A Driedger, *The Composition of Legislation* (2edn, Ottawa: Department of Justice 1976) 83, cited by Paul Salembier, *Legal and Legislative Drafting* (LexisNexis 2009) 79.

⁸⁷ Salembier (n86) 80. For the effect of long sentence in legislation, see also Duncan Berry, 'Legislative Drafting: Could our Statutes be Simpler?' (1987) Statute Law Review 92, 93. See also Berry, D, 'Reducing Complexity of Legislative Sentences' (January 2009) The Loophole 37.

⁸⁸ See G. Thornton (n72) 142. See Also Stewart (n14) 28-39.

⁸⁹ Asprey (n2) 255.

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105d. Authorizing foreign officials' action affecting Australian-flagged boats ⁹⁰

Article 48: Community service as alternative penalty to imprisonment in case of a convict's failure to comply with court orders ⁹¹

After reading the section, the reader may or may not read the content of the section depending on what he or she wants to know. When reading the headings in the example above, it is obvious that those headings can guide the reader in determining the meaning of the provision of the relevant section.⁹² However, they must not be like substantive clauses. In order to be effective, the drafter has to use them in respect of principles of legislative drafting. In this context, section headings must be unambiguous, certain and make direct reference. Horn's comments on these drafting rules are based on Stewart analysis on Thornton's general prescription for accuracy tempered by the constraint of brevity: avoiding ambiguity, certainty and direct reference.⁹³

Avoiding ambiguity: ⁹⁴ When drafting section headings, the drafter should avoid obvious ambiguity by using correct words in right place. 'If language is not correct, then what is said is not what is meant; if what is said is not what is meant, then what ought to be done remains undone'.⁹⁵ Stewart cites as an example the heading 'Application',⁹⁶ often used to indicate the scope of section. This form is sometimes used in Australian legislation.⁹⁷ It can easily be misread as dealing with the process of applying for some form of legislative or entitlement. In this specific case, the ambiguity can be avoided by the use of an alternative such as 'Scope'⁹⁸. The Rwandan drafter uses 'Scope of

⁹⁰ Fisheries Management Act 1991 (Australia), s 105d.

⁹¹ Organic Law n° 01/2012/ol of 02/05/2012 instituting the Penal Code (Rwanda), Article 48.

⁹² Simamba (n65) 127.

⁹³ Horn (n16) 193-194. For Thornton Principle, see Thornton (n72) 142. For Stewart analysis, see Stewart (n14) 23-37.

⁹⁴ See also J. Stark, 'Should the main Goal of statutory Drafting be Accuracy or Clarity' (1994) 15 Statute Law Review 205.

⁹⁵ Editorial, (1951)37 *Journal of American Bar Association* 289, cited by Reed Dickerson, *The Fundamental of Legal Drafting* (1986 St. Paul, Minn.: West Publishing Co)131.

⁹⁶ Stewart (n14) 32.

⁹⁷ See for example section 7 of Fisheries Management act 1991.

⁹⁸ Horn (16) 193. See also Stewart 32. The Rwandan drafter use sometimes 'scope of application.

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application'⁹⁹ sometimes, even if 'of application' seems to be unnecessary words.¹⁰⁰ Dickerson criticizes such kind of ambiguity when he says: 'too many lawyers draft as if they were preparing an instrument solely for their own reference. Apparently, they assume that if they have the substance of the instrument clear in their own heads and reflect it in symbols intelligible to themselves they have fully discharged drafting responsibility'.¹⁰¹ Ideally, legislation should be as accessible and understandable to its reader as it is to its drafter. Every reader is supposed to understand the legislation without having consulted an adviser possessing legal expertise.¹⁰² Therefore, drafters have a task of drafting non-ambiguous legislation, rapidly and correctly comprehensible for the reader.¹⁰³

Certainty: Certainty or legal precision is one of general principles of plain language which make legislation understandable.¹⁰⁴ However, some legislative section headings used in Australia and Rwanda are affected by imprecision or uncertainty. In Australia, we can find as an illustration of uncertainty the inaccurate use of 'etc' in section headings. This form of section headings is inaccurately used in many different pieces of legislation in Australia. For example, it is used in six sections of the Fair Work (Building Industry) Act 2012.¹⁰⁵ As alternative, and if a list is too heterogeneous to be adequately described in a brief heading, the drafter needs to choose between dealing with all the elements of the list together,¹⁰⁶ with the respect of the principle of brevity.

According to Stewart, there is only one situation in which 'etc.' should be used in a section heading: when it seems necessary to abbreviate a lengthy list of specific items and those specifics, which are replaced in the heading by 'etc.' are fairly predictable given those which are retained in the heading. To the contrary, it should not be used to

⁹⁹ See for example Article 2 of Law n°54/2011 of 14/12/2011 relating to the rights and the protection of the child.

¹⁰⁰ See for example Law n°54/2011 of 14/12/2011 relating to the rights and the protection of the child, Article 2.

¹⁰¹ Dickerson (n95) 25.

¹⁰² See F.A. R. Bennion, 'Statute Law Reform-Is Anybody Listening?' (December 1993) *Clarity* 29, 19.

¹⁰³ Jack Stark, 'Should the Main Goal of Statutory Drafting Be Accuracy or Clarity?' (1994) 15 *Statute Law Review* 207, 209-210.

¹⁰⁴ Ian Turnbull, 'Plain Language and Drafting in General Principles' (July 1995) *The Loophole* 25.

¹⁰⁵ See Fair Work (Building Industry) Act 2012, Sections 51, 62, 63, 73, 73A and 77.

¹⁰⁶ Stewart (n14) 34.

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abbreviate a very short list, or where its use is misleading to readers, causing them to read more than is necessary or to fail to read that which is necessary to address their problems, or it serves no abbreviating function at all.¹⁰⁷

In any jurisdiction, the ability to determine the content and status of legislation with certainty is essential for those who must enforce legislation as well as for those who must obey the legislation.¹⁰⁸ Indeed the drafter cannot be forced to ‘sacrifice certainty for simplicity’, since the result may frustrate the legislative intention.¹⁰⁹

In any case, the use of ‘etc’ is always inaccurate by giving incomplete list in the heading of the section. In search of precision, all items of the list can be mentioned in the section. In this case, however, it would be contrary to the principle of brevity.¹¹⁰ Finally, it would be better not to use it at all, and to use an alternative descriptive heading. For example: section 107 of Fisheries Management Act 1991 is stated as follows: ‘False or misleading information etc’. However, the content of the section is only about ‘*false or misleading information and their sanctions*’; and this would be the accurate descriptive heading of the section for the reader with direct reference.

Direct reference: The heading should directly indicate the contents of the section. Stewart gives the example of a provision headed ‘*Corrupt use of official information*’ which deals only with one aspect of ‘*corrupt use*’. This heading is misleading to readers, because they expect to be informed about ‘*official information*’. Stewart suggests a summary heading such as ‘*Certain persons deemed ‘official’ in corruption proceedings*’.¹¹¹ Another example can be found in the Rwandan Penal Code. The heading of its Article 219 is misleading to readers indicating ‘*Offering alcoholic beverages or tobacco to a child*’ while the contents of Article is about ‘*offering or selling alcoholic beverages or tobacco to a child*’. This may be the accurate heading of the

¹⁰⁷ Stewart (n14) 35-36.

¹⁰⁸ Robert A. Duperron, ‘Interpretation Acts-Impediments to Legal Certainty and Access to the Law’ (2005) 26.1 Statute Law Review 64, 68.

¹⁰⁹ Sir Patrick Mayhew, ‘Can Legislation Ever Be Simple Clear, and Certain?’ (1990) 11 Statute Law Review 1, 10.

¹¹⁰ For details on the need of brevity of section headings, see on page 32.

¹¹¹ Stewart (n14) 37.

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Article to the audience who would also want to be informed on *‘selling alcoholic beverages or tobacco to a child’*.¹¹²

In vertical dimension of section heading, this analysis on accuracy, certainty and direct reference is not exhaustive. It is an indication that the drafter must use section heading in the respect of techniques and principles of legislative drafting as he or she has to do for a relevant content of the section. In horizontal dimension, all section headings play other roles.

4.2.2. Section Headings in Horizontal Dimension

Considering the horizontal dimension (section heading and its relation to other section headings of a piece of legislation), there are no specific techniques developed in Rwandan jurisdiction. It is up to the Rwandan drafter to arrange words and its order in the section headings, and the order of the section headings to make the table of content help the user.¹¹³ Contrary, the Australian drafter has developed different techniques in this regard. However, those techniques are not standards imposed by the Acts Interpretation Act.¹¹⁴

Horn gives us five horizontal drafting techniques used in Australian legislation and those techniques may help any drafter in achieving his or her duty. He also shows how the Australian drafter divided section headings in sequences in order to take best advantage of this aspect of the operation of section headings.¹¹⁵ The aim of this study is not to develop all those indicative techniques. However, by use of one example, it would be important to talk about their role in the table of contents in respect of the use of consistent language in Australian legislation:

¹¹² See Organic Law n° 01/2012/ol of 02/05/2012 instituting the Penal Code (Rwanda), Article 119.

¹¹³ For the table of content, see Instructions No 01/11 of 14/11/2006 (n28), Article 2 (3).

¹¹⁴ See the Acts Interpretation Act 1901 amended by the Acts Interpretation Amendment Act 2011.

¹¹⁵ For horizontal drafting techniques and techniques of sequences in Australia, see Horn (n17) 195-200.

Part 7-4- Relationship between Australian laws

Division 1-Introduction

253 Guide to this Part

Division 2-Concurrent operation

254 Concurrent operation-general rule

255 Concurrent operation-regulation may resolve inconsistency

Division 3-When other laws prevail-

256 When other laws prevail-certain other Commonwealth Acts

257 When other laws prevail-security agreements

258 When other laws prevail-personal property, security interests and matters excluded from State amendment referrals

259 When other laws prevail- exclusion by referring State or Territory law

Division 4-When this Act prevails

260?¹¹⁶

261 When this Act prevails-registration requirements

262 When this Act prevails-assignment requirements

263 When this Act prevails-formal requirements relating to agreements

264 When this Act prevails-attachment and perfection of security interests

Figure 3: Personal Property Securities Act 2009 (Australia)¹¹⁷

This strategic arrangement in sequences of section headings used in Australian legislation has its great importance in the organization of headings in the table of contents. The drafter arranges the sections in an order that enables primary users to understand the way the content of the Part, (Chapter, Division or Subdivision) of the piece of legislation affects such users and help them find what they need. Within the content of legislation, the choice of words, their order in the headings, and the order of the section headings of the whole piece of legislation is crucial for the drafter. Thus the principle that 'drafting technique consists mostly in finding the right words, and putting

¹¹⁶ An error has been made by the drafter by not mentioning section 260.

¹¹⁷ See Horn (16) 200.

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them in the right order' applies for the headings which compose the table of contents.¹¹⁸

As the table of contents is to be used via the navigational aid, it must be accessible.

Even though section headings in sequences are seen to be repetitive,¹¹⁹ the use of consistent language and phrasing in them help the user make implicit links across the piece of legislation. As illustrated in figure 3,¹²⁰ the consistent use of the division headings 'Concurrent operation' (in Division 2); 'When other laws prevail' (in Division 3), and 'When this Act prevails' (in Division 4) helps to join each division and all divisions of the Part 7-4 together.

Indeed, the use of sequences in section headings can be used to give coherence and some transparency to relatively complex provisions, in order to clarify the logic of the piece of legislation.¹²¹ Moreover, when the words and sentences in a piece of legislation are clear, and the provisions are not properly arranged, the piece of legislation will be more difficult to understand.¹²²

In Australia, the technique of sequences is sometimes used to write the enacted Laws to make them more clear and understandable. A typical example is The Income Tax Law. This Law was enacted in 1936 and regularly extensively amended from that time, with a result in complex and unwieldy structure. In 1993, it was rewritten using section headings in sequences in order to make it readable and understandable for the readers.¹²³

As we mentioned above, the Rwandan drafters do not use the technique of section headings with sequences. However, particularly for a long text of a piece of legislation, the Rwandan drafters have merit in helping users of legislation in finding what they are looking for by indicating different subtopics within the structure (Parts, Volumes, Titles, Chapters, Sections and Sub-sections) with the section headings.¹²⁴

¹¹⁸ N. Horn 'Shaping Policy Into Law: A strategy for Development Common Standards' (2011) The Loophole (special ed.) 40.

¹¹⁹ For the use of section headings in sequences in Australia, see on page 13-14.

¹²⁰ See on page 28.

¹²¹ Horn (n16) 200.

¹²² IML Turnbull, 'Clear Legislative Drafting: New Approaches in Australia' (1990) 11 Statute Law Review 161, 170

¹²³ Kerry Jones, 'Rewriting Australia's Income Tax Law' (October 1998) The Loophole 19.

¹²⁴ See Instructions No 01/11 of 14/11/2006 (n28) Article 2 (1).

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The recent example is the Penal Code, with 766 Articles within the structure of Titles, Chapters, Section and Subsections.¹²⁵ This can also be done in Australia. However, given the brevity of the Part of some pieces of legislation, the judgment was made that the use of section headings with sequences within the Chapter can do the same job. Indeed, when separate Chapters, Parts, Divisions and Subdivisions are created in the piece of legislation, section headings with sequences can also be used as it can be seen in figure 3.¹²⁶

With regard to the horizontal dimension of section headings, the main drafting principle is clarity and transparency of structure.¹²⁷ Section headings as used in Rwanda and Australia can all help readers find specific text and help them to understand how text is organized. Citing Thring, Bennion recognizes the role of section headings when read together in the arrangement of sections of the piece of legislation: they 'should have such a consecutive meaning as will give a tolerably accurate idea of the contents of the Act'.¹²⁸

Indeed, section headings serve as a navigation guide to the arrangement of a piece of legislation as a whole. From the table of contents of a piece of legislation, the primary user should be given a sense of three aspects of the law. In the first place, section headings indicate the scope of the piece of legislation, and the relative importance of various topics. Secondary, they serve as the flow of the 'story' told on the piece of legislation from section to section. Through the indication of the nesting of sections within the whole structure of the piece of legislation, section headings indicate the organization and logic of the matter of the piece of legislation. As Horn explains, 'section headings behave as a sort of structural Tarzan's Grip (a brand of glue) enabling the relationship between the parts and the whole to be fixed in place'.¹²⁹ With other

¹²⁵ See Organic Law n° 01/2012/ol of 02/05/2012 instituting the Penal Code and abrogating the Decree-Law n° 21/77 of 18 August 1977 instituting the Penal Code as amended.

¹²⁶ See figure 3 on part 7-4 of Personal Property Securities Act 2009, on page 28 (sequences are used in Divisions which compose the Part).

¹²⁷ Horn (n16) 195.

¹²⁸ F.A.R. Bennion, *Statutory Interpretation* (London : Butterworths, 1992) 512.

¹²⁹ Horn (n16) 195.

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headings, section headings would then operate in addition as an immediate indication of Structure and they can be drafted in the form of question in Australia.

4.2.3. Use of Section Headings in the Form of Question

One of the drafting techniques advocated for greater access to legislation for primary users is the use of section headings as questions; and this form of section headings is sometimes used by Australian drafters. Section heading in the form of questions might work in a third dimension: they come out of the text to engage the reader in a dialogue.¹³⁰ The idea of writing documents in question-form is not new.

As Elliott notes, ‘most readers come to documents with questions: can I do this? What happens if I do that? How can I get this or that?’¹³¹ With the question in section heading, readers come to a piece of legislation and find the relevant answer in the piece of legislation. Suddenly, the document becomes alive, meaningful and functional. As an example of question in section heading is, instead of a heading ‘Eligibility’ the drafter may use ‘Who is eligible?’¹³²

Hartley conducted educational document design studies into the use of questions in headings with school students. The first study indicated that this form of heading assisted students with relatively low academic capacity.¹³³

Coming back to legislation, by using section headings in the form of questions that members of the public might actually be moved to ask, is ‘another technique that emphasizes ‘direct communication’ with the audiences.’¹³⁴ The provisions that follow the heading then have force of the answer to the question. By simulating the exchange that occurs in ‘real’ conversation, this question-answer format creates a sense of

¹³⁰ Horn (n16) 202.

¹³¹ Elliott D., ‘Using Plain English in Statute’ (December 1992)26 Clarity, 18.

¹³² Ibid.

¹³³ J Hartley and M Trueman, ‘A research Strategy for Text Designers: the Role of Headings’ (1985) Structure Science 151-152, cited by Horn (17) 202.

¹³⁴ For legislation as a tool of communication, see P. Blume, ‘The Communication of Legal Rules’ (1990)11 Statute Law Review 189.

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immediacy.¹³⁵ Stewart supports this advocacy of dialogue in legislation with empirical testing of a range of users of legislation.¹³⁶

Other advocates of plain language also try to accommodate the tendency of use of question in legislation. Readers of legislation are likely to approach an Act with specific problems or questions in mind', and they do not always plan to read the piece of legislation from the beginning to end.¹³⁷ This is certainly true if they consult the piece of legislation on more than one occasion. Therefore, legislative headings in the form of questions help readers to find the provisions that they need to read in order to answer their questions more quickly.¹³⁸

In Australia, a survey has been conducted among professional users of Australian Federal legislation. The use of the form of question in the headings of legislation appears to be a reasonable level of support. The survey found that 75% of respondents were satisfied that the use of question as section headings make the law easier to understand and read, rising to 87% satisfaction by judges and magistrates. However, some respondents warned that not all laws would lend the use of question in headings. Some also said that this technique was 'patronizing', and there is a risk that readers of the law might miss relevant information in a section not covered by the specific question.¹³⁹

It would appear that there are some advantages for using section headings in the form of questions. However, as noted above, and in view of the cautionary responses to the survey in Australia within which this technique is sometimes used, precaution should be taken in the use of this technique. We suggest that it is not always appropriate for section headings to be rewritten as a question. The drafter can improve easy accessibility and understanding of legislation by the systematic use of structure of legislation. Like other drafting techniques, the use of questions in section headings and other techniques of section headings, for instance techniques of sequences used in

¹³⁵ Sullivan (n51) 191

¹³⁶ Stewart (n14) 58.

¹³⁷ Klongold (n69) 511.

¹³⁸ Ibid.

¹³⁹ P Quiggin 'A Survey of User Attitudes to the Use of Aids to Understanding in Legislation' (2011) *The Loophole* (special edn.) 96.

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Australian jurisdiction, seem in some cases complicated and have therefore, some evident restrictions.

4.3. Restrictions and Advantages of Section Headings on Primary Users

As it appears in the different examples from the use of section headings in Rwandan and Australian Jurisdictions, the section headings are redundant. Their use tends to work against the principle of brevity and their effectiveness depends upon the effectiveness of repetition.

The section headings with sequences as used in Australia increase the problem of redundancy in legislative drafting. Sometimes it is difficult to restrict the length of section heading to a single line. Therefore, their effective use may demand some creative compression of material. If the reader spends too much energy understanding the passage's structure, he or she will have too little energy to understand fully the passage's content.¹⁴⁰

At a more fundamental level, there is a fear of redundancy in legislation. This fear is based on the concept that any form of repetition of the law creates the potential for misinterpretation. Thus, section headings, by restating in short form, or partially repeating, the main statement of the piece of legislation, create a potential for inconsistency with that main statement.¹⁴¹ Of course, consistency and innovation both need to contribute to the effectiveness of legislation.¹⁴² In the expectation they fix the meaning of legislation, section headings have to be used carefully.

In implicit recognition of its usefulness, and reliance on general textual conventions about how headings and text interact, redundancy is not so strictly avoided in Australian and Rwandan legislation. In general, the use of section headings with continuing drafting practice which applies their different types for different occasions is recommended.¹⁴³

¹⁴⁰ Jack Stack, 'Reader Expectation Theory and Legislative Drafting' (1995) 17 Statute Law Review 210.

¹⁴¹ Horn (16) 194. For the consistency in legislation, see Reed Dickerson (n99) 168-169.

¹⁴² Stephen Laws, 'Consistency versus Innovation' (October 2009) 3 The Loophole 25.

¹⁴³ Horn (16) 195.

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Indeed, if we can give credibility to another approach about redundancy in effective communication of information, this approach fully engages the communicative potential in the text by agreement of multiple indications for the effectiveness of the content of legislation. Consequently, the fear of redundancy can be overcome. With this context, effective communication requires redundancy.¹⁴⁴ When communicating new information, most writers include familiar material along with the new.¹⁴⁵ Although the familiar material is redundant, it is included because it helps readers integrate the new information by relating it to what they already know.¹⁴⁶ If the new information is difficult, highly original or for any reason remote from what the reader already knows, writers typically provide more contexts and repeat it more than once.¹⁴⁷ The more challenging the material is, there is a need for redundancy, for references to familiar material and for repetition of what is new.¹⁴⁸ Therefore, the inherent redundancy of section headings can be a positive virtue in terms of communication, as the reader may be given a greater opportunity to understand legislation, without compromising its effectiveness.

In addition, even though repetitive, section headings have an advantage of navigational aid. With other headings, they are used as a table of contents of the piece of legislation.¹⁴⁹ The reader refers to a table of contents to become familiar with the content of the document and locate specific information without reading the entire document.¹⁵⁰ Though not usually considered as a part of a piece of legislation, the table of contents is primarily considered as a navigational aid for the reader.¹⁵¹ It permits readers to go immediately to the provisions in the piece of legislation that are most relevant to their situation; and for other provisions, they should properly know their position.

¹⁴⁴ Sullivan (n51) 200.

¹⁴⁵ Ibid 184.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ For Rwanda, the table of contents is provided for by Instructions No 01/11 of 14/11/2006, Article 2 (3).

¹⁵⁰ Klongold (n69) 531. See also Richard Castle, 'What Makes a Document Readable ?' (November 2007)58 Clarity, 14

¹⁵¹ Salembier (n86) 291-292.

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By careful use of section headings supported by navigational systems, the drafter guides readers to the relevant provisions. The drafter can contribute a great deal to accessibility and comprehensibility by arranging the provisions of a piece of legislation logically and orderly, dividing it into different subdivisions in some cases and inserting headings, sub-headings and section headings as guide post. If a piece of legislation is arranged and if the table of contents as visual aids is supplied, then a reader, 'by scanning' the piece of legislation, can at first glance get a moderately good idea of what the subject matter is, and what the scope of the piece of legislation is.¹⁵²

By the table of contents, the reader gets an overall picture of the whole piece of legislation in mind. It is easier to see the significance of the parts and the way they relate to each other and it is also easier to concentrate on the details. Without section headings, the reader has to construct a mental picture by absorbing details one by one and fitting them together. This makes it harder to understand the significance of the details before the whole picture is in mind.¹⁵³ Headings to sections can be multiplied by avoiding the traditional practice of having sections with many subsections.¹⁵⁴ Sections headings in turn make the table of provisions a more effective outline of the content of the piece of legislation.¹⁵⁵ As general guide however, drafters should try and keep its use with precaution as they have to do for substantive provisions.¹⁵⁶ The use of Section headings introduces substantive redundancy in the form of repetition into legislation, and this form is one of the elements of effective communication promoted by plain language style advocates.¹⁵⁷

The more redundant a piece of legislation is the greater possibility that readers will assimilate and remember the drafting intent. When all headings are gathered together in a table of contents, the repetition becomes less obstructive and as

¹⁵² Klongold (n69) 511.

¹⁵³ Turnbull (n122) 169-170.

¹⁵⁴ Traditionally the Commonwealth does not use headings to sub-sections. However, they are rarely used in Australia. For example, headings are used for some sub-sections of Social Security (Administration) Act 1999 as amended to date.

¹⁵⁵ Turnbull (n122) 170.

¹⁵⁶ For the basic attributes of good formal writing, see Roger Rose, 'The Language of the Law: How do We Need to Use Language in Drafting Legislation?' (August 2011) 3 The Loophole, 4.

¹⁵⁷ Nick Horn, 'Legislative Drafting in Australia, New Zealand and Ontario: Notes on an Informal Survey' (2005) 1 The Loophole 55, 59.

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considerable navigational tool to the reader, the negative impact of repetition is not so pronounced. It is always a matter of the drafter's judgment in a particular case.

It is more important that readers, for instance primary readers be able to access legislation quickly and effectively via the grouping of provisions. This role can be achieved in vertical and horizontal dimensions by the use of section headings. This is illustrated by different techniques used in Australian and Rwandan legislations. Depending on the context, they can take different form. They can be descriptive, summarizing and in the form of question in respect of techniques of plain language. When these techniques are supplied by navigational aid via the table of contents, they direct primary users (or primary interpreters) downwards into the section and across the rest of the piece of legislation. They also help official interpreters.

5. Assistance for Official Interpreters

As we stated above, there would be a little difference between 'use' and 'interpret'.¹⁵⁸ The 'difference between primary user' and 'Official interpreter' resides in 'primary' and 'official'. A survey conducted by the Office of Parliamentary Council of Australia on the readers of legislation concluded with a strong support for the use of the aids in legislative drafting used in Australia including section headings and subsection headings. The readers included those that we can call official interpreters: judges, barristers, private sector solicitors, public sector solicitors and prosecutors, public service staff who work with legislation and parliamentary staff who work with legislation.¹⁵⁹ Considering the use of section headings in Rwanda and Australia as Commonwealth members, our analysis within this part aims to show whether the use of section headings affect official interpreters in a different way from primary users.

¹⁵⁸ Horn (n16) 206.

¹⁵⁹ Quiggin (n139).

5.1. Common Law and Interpretation

When talking about the impact of section headings on official interpreters, Horn focuses upon the effect of their redundancy on official interpreters in Common Law. Common Law has always regarded statutes somewhat warily, as evidenced by notoriously multifarious, ad hoc, and internally inconsistent rules as statutory interpretation.¹⁶⁰ However, gradually, Common Law agrees that section headings assist in working out the meaning of legislation, at least as far as they may resolve ambiguities in the text of legislation.¹⁶¹

With this regard, reading legislation by unofficial interpreters (primary users) and official interpreters should be undertaken in just the same way, and the courts should allow evidence of the meaning of legislation by primary users disinterested in the outcome of the particular case. Furthermore, the judiciary's interpretation methodology can be addressed through understanding the way in which the meaning of any word is in some sense different in every distinct context in which it appears.¹⁶²

In line with the Sullivan's analysis, Horn supports that there should be no special legal rules for 'interpretation' that do not apply to how meaning is generated from laws by ordinary users.¹⁶³ The result of such an approach is that the ways in which modern drafters strive to make the legislative text more accessible and understandable to primary users can be more easily reconciled with equally vital concern of drafters to ensure legal effectiveness by making the meaning of the law just as clear to official interpreters.¹⁶⁴

In preparing legislation, drafters concentrate on identifying the legal messages, finding appropriate words to express those messages, and anticipate how their words will be interpreted by audiences without assistance from professionals. In fact,

¹⁶⁰ William Twining and David Miers, *How to Do Things With Rules* (5th edn, Cambridge University Press 2010) 242-245.

¹⁶¹ See Simamba (n65) 125-126 and Stewart (n14) 40-41.

¹⁶² Brian G. Slocum, 'Linguistics and Ordinary Meaning Determinations' (2012) 33.1 Statute Law Review 39, 83.

¹⁶³ Horn (16) 206.

¹⁶⁴ Ibid 205.

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assuming that the typical reader will necessarily be assisted by professional advice is inappropriate. Indeed, it would be difficult, to determine the degree of expertise and specialist knowledge that the typical adviser is likely to have in given circumstances.¹⁶⁵

In turn, interpreters focus on the meaning of the text, what legal messages were intended, and assumptions the drafters of the text would have made about interpretation. In other words, both drafters and interpreters are preoccupied with the same things.¹⁶⁶

Rwanda, as one of the multilingual legal systems of Commonwealth within which, the original draft must be translated in other official languages,¹⁶⁷ adopted the section heading as a drafting technique.¹⁶⁸ Horn's analysis does not take into account the role of translators in multilingual legal system like Rwanda, in order to classify them as primary or official interpreters.

5.2. Translator as Official Interpreter

In context of the effectiveness of the use of section headings in a multilingual legal system like Rwanda within which the intervention of the legislator is required, the role of the translator has to be considered. When translating a piece of legislation, translators act as official interpreters. During their duty of legislative translation, they make the 'language of law'.¹⁶⁹ In order to translate it from one language to another, they create a law as legislative makers.¹⁷⁰ As Judges and Lawyers, translators have the task of interpreting the meaning of the text and its words, expressions, sentences and techniques in particular context to the particular audience.¹⁷¹

¹⁶⁵ Daniel Greenberg 'The Nature of Legislative Intention and its Implications for Legislative Drafting' (October 2007) *The Loophole* 6, 10.

¹⁶⁶ Sullivan (n53) 177.

¹⁶⁷ See Constitution of the Republic of Rwanda of 04 June 2003 as amended to date, Article 5 (for three Official languages) and Article 93 (for the use of three official languages in legislation).

¹⁶⁸ See Instructions of Minister of Justice No 01/11 of 14/11/2006 (n28), Article 2(3).

¹⁶⁹ L. Dodova, 'A Translator Looks at English Law' (1989)10 *Statute Law Review* 69.

¹⁷⁰ Pozzo and Jacometti (n61) 89.

¹⁷¹ Enrique Alcaraz and Brian Hughes, *Legal Translation Explained* (St Jerom Publishing 2002) 24.

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Generally, in multilingual legal system as mentioned in part 4, translators are also one of the audiences of the drafter, and when translating a piece of legislation, they act as a transition between the drafter and other audiences of legislation. Additionally, they operate more effectively as mediators between the legislation and the person affected by it (primary users) and official interpreters. In that situation, section headings, and sometimes in the form of redundancy, can help them to get the meaning of the section and whole pieces of legislation, in order to accomplish their duty effectively.

5.3. Redundancy and Interpretation

In part 4, this study talked about the effect of redundancy of section headings on primary users.¹⁷² The effect of Section headings on primary users is not much different from the effect on official interpreters, having in mind the Horn's premise, which intends not to make a greater difference in reading legislation by primary users and official interpreters.¹⁷³

Of course, different textual features contribute to meaning in different ways, and to various degrees. However, the way in which textual indications are taken into account in working out the meaning of legislation is determined not by artificially rigid legal presumptions, but more generally about how these techniques are understood by any audience of legislation in a given context.

The more difficult issue is determining status of section headings in legislation. Insisting that navigational and comprehension aids are a part of the piece of legislation in which they appear is hardly controversial. The issue is confirming that section headings are part of the text to be interpreted or merely context that assists in interpreting the text, or if they declare the law or merely comment on it. As Sullivan makes it, 'all the components of plain language statutes should be regarded as legal text, as declaring and not just commenting on the law'.¹⁷⁴ What is enacted into

¹⁷² See on pages 33-34.

¹⁷³ Horn (n16) 206.

¹⁷⁴ Sullivan (n51) 201.

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legislation is the entire Act. For this reason, all components included in legislation, including section headings should be as integral part of legislation as enacted. All should have equal status. If a conflict occurs between a section heading on one hand and the provision of the section on the other, it should be resolved in the same way that a conflict between two provisions would be solved. The text of a section should not automatically be privileged over that of its heading if there is an apparent inconsistency in apparent redundancy.¹⁷⁵

Finally, there is no reason to assume that if a mistake has been made in a section, it occurred in drafting its headings rather than the provision of the section. For instance, the fact that section headings are sometimes amended in Rwandan and Australian legislations is evidence that they are considered as parts of legislation in those jurisdictions. Obviously, when the content of a section is amended, its heading may be affected and consequently amended. It also brings section headings into the 'intrinsic material' of legislation that can be used to determine the purpose, and therefore, the meaning of a provision.¹⁷⁶

Section headings taken in vertical dimension and horizontal dimension help official interpreters in the same way for primary users. They introduce effective redundancy. The analysis has to consider all official interpreters or all audiences who act as official interpreters, for instance legislative translators in a multilingual legal system like Rwanda. Horn's analysis does not take into account this aspect.

CONCLUSION

The aim of this study is to prove that the use of section headings in legislation contributes to achieve effectiveness by helping readers of legislation find location of what they need to know faster, and understand it more easily. To prove the hypothesis, this research has used a comparative approach of Rwandan and Australian jurisdictions. It applied three criteria as used by Horn, on the use of section headings in

¹⁷⁵ Sullivan (n51) 201.

¹⁷⁶ See the Acts Interpretation Act 1901 (n19), s 15AA.

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Australia: Primary users and Official interpreters, Assistance for Primary Users; and Assistance for Official Interpreters.¹⁷⁷ Through these criteria on different techniques of section headings used in Australian legislation, Horn concluded on their effectiveness by assisting or at least affecting access to interpretation of legislation by two classes of readers of legislation: 'primary users and official interpreters'.¹⁷⁸

The brief history and the comparative use of section headings in the two jurisdictions in the context of general structure of legislation in those jurisdictions shows some similarities and differences. Both jurisdictions are members of Commonwealth. However, Australia is an ancient member of Commonwealth, while Rwanda is a new member with a legal system which is mostly Civil Law moving towards Common Law. The general structure or at least the general subdivisions of legislation in Australia and in Rwanda is not very different. However, Australian Drafters have used section headings dating back many years ago, while they are recently used in Rwandan legislation. Therefore, different techniques of section headings were developed in Australian jurisdiction in comparison with Rwandan Jurisdiction as this research demonstrates through the analysis and the use of different examples and figures.

Australian Acts Interpretation Act is open about the techniques of section headings to be used.¹⁷⁹ Therefore, drafting techniques of section headings in Australia include, descriptive section headings, summarizing section headings, the use of questions and sequences in the section headings. In Rwanda, all section headings are supposed to be descriptive as provided for by the instructions No 01/11 of 14/11/2006.¹⁸⁰ It would be better if these instructions and Australian Acts Interpretation Act¹⁸¹ specify the status of section headings in a piece of legislation. In any case, they have to be considered as other components of the piece of legislation. The fact that they are sometimes amended in Australian and Rwandan jurisdictions is a proof.

¹⁷⁷ Horn (n16) 191-208.

¹⁷⁸ Ibid.

¹⁷⁹ See the Acts Interpretation Act 1901 (n19).

¹⁸⁰ See Instructions No 01/11 of 14/11/2006 (n28), Article 2 (3).

¹⁸¹ See the Acts Interpretation Act 1901 (n19).

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In his analysis on Primary Users (those whose behavior is sought to be changed by the piece of legislation) and Official Interpreters (those whose interest in legislation is either to administer or implement it or to adjudicate disputes about its meaning in administrative or judicial forums), Horn concludes on qualifying the both groups of audiences of legislation as ‘interpreters’.¹⁸² Those groups are supposed to be affected by the use of section headings by the legislative drafter, or at least supposed to read (or interpret a concerned piece of legislation with different level of interpretation.

In our analysis, we do not disagree with Horn’s conclusion. However as demonstrated by other advocates of plain Languages, the facilities provided by the drafter, such as section headings must be provided by the drafter with the target on primary audience (or primary interpreter). Moreover, when there is an issue of official interpretation, such facilities also save as guides for official interpreters.

The analysis also showed that, the analysis of audiences of legislation as made by Horn and most other advocates of plain language don’t include the legislative translator in a multilingual legal system like Rwanda, even though the term ‘interpreter’ may include the translator. The translator is not considered as ‘official interpreter’. However, the analysis demonstrates how when translating a piece of legislation, the translator acts as official interpreter. With this regard, section headings can help the translator to get the meaning of each section and whole piece of legislation and help him or her to translate the concerned piece of legislation effectively. ‘Primary interpreters’, ‘official interpreters’ and translators are all audiences or readers of legislation and can benefit from the use section headings in legislation.

Horn’s analysis about the assistance of section headings for primary users is focused upon empirical evidence and the use of section headings in three dimensions: vertical dimension (or the section heading with content of the related section), horizontal dimension (or the section heading in the context of other section headings of the piece of legislation, and the use of section headings in the form of questions.¹⁸³ The analysis

¹⁸² Horn (n16) 206.

¹⁸³ Ibid.

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of this study shows how, those dimensions are taken into consideration in Rwandan and Australian jurisdictions to help readers of legislation to find what they want in legislation and understand it. This part seems to be the main part of the analysis. This is because, even though the difference is made between 'primary users' (or primary interpreters) and official interpreters, all those are readers of legislation with different aims, and the use of sections headings serve as guide for them in the almost same way. Other authors like Hartley, Trueman and Stewart supported the empirical evidence made by Horn.¹⁸⁴ Their studies on the use of headings in documents conclude on their effectiveness on different readers of documents. Headings are an aid for finding and understanding the content of the text and search times are faster for text with headings than for text without headings.

Even though, their analysis does not offer empirical evidence, Horn and other advocates of plain language who talked about legislative section headings concluded on their general positive effect to readers by assisting them find what they want and understand it. In vertical dimension, they assist readers to understand the contents of the relevant section of the piece of legislation.¹⁸⁵ In horizontal dimension, they help readers of legislation find specific text and help them understand how the text is organized.¹⁸⁶ This role is also achieved via the table of contents, as navigational aid for readers.¹⁸⁷

The fourth dimension applied by Horn is section heading in the form of question, is really in the context of the form in which section headings may be drafted.¹⁸⁸ As indicated by this study, with illustrations from Rwandan and Australian jurisdictions, section headings can be descriptive, summarizing, in the form of questions. All those forms can also be used with sequences as it is in many pieces of legislation in Australia. The analysis shows the effects of each form for the readers in finding and understanding what they want in a piece of legislation.

¹⁸⁴ See Sullivan (n51) 49-53 and Stewart (n14) 21.

¹⁸⁵ See on pages 22-27.

¹⁸⁶ See on pages 27-31.

¹⁸⁷ See on page 34.

¹⁸⁸ For the use of question in section heading, see on pages 33-36.

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In general, the use of section headings has some restrictions. Section headings, for instance section headings in the form sequences are redundant. Their use tends to work against the principle of brevity and their effectiveness depends on effectiveness of repetition.¹⁸⁹ As MacDonald argues 'Plain language is useless without a relentless commitment to brevity'.¹⁹⁰ However, it is not always possible to be short and clear, and it is desirable that legislation be drafted in way so that is flexible for more clarity.¹⁹¹ A clear section heading may require length, not because its section has too wide a scope, but because length is necessary for clarity. Section headings which are too brief, which are ambiguous or which lack certainty are the result of too little thought being given to their drafting.¹⁹² Indeed, section headings introduce substantive redundancy in the form of repetition, and this is sometimes useful for a complicated piece of legislation.¹⁹³ Even repetitive, section headings are an important navigational aid. With other legislative headings, they are used as a table of content of the piece of legislation. The reader refers to a table of contents to locate specific information without reading the entire piece of legislation. With the reference to the table of contents, the negative effect of redundancy does not appear.

There is no form which can be appropriate for each piece of legislation as there is no drafting technique that can be appropriate for each piece of legislation in each context. As Keyes says 'there is no shortcut to effective writing. Practice will make it easier, but good legal writing is simply hard work'.¹⁹⁴ Legislative drafting is a 'creative art'.¹⁹⁵ For each context, and in consideration of potential readers of a piece of legislation, the drafter has a constant duty to consider alternative forms and choose the simplest by balancing different degrees of precision and understandability against

¹⁸⁹ See on pages 32-35.

¹⁹⁰ Duncan MacDonald, 'Disclosure Overload: Lawyers Are the Problem, not the Solution' (May 2004)51 Clarity, 8.

¹⁹¹ Maree Sainsbury, 'Context or Chaos: Statutory Interpretation and the Australian Copyright Act' (2011)32.1 Statute Law Review 54, 59.

¹⁹² Ibid.

¹⁹³ See on page 36.

¹⁹⁴ John Mark Keyes, 'The Democratic Challenge to Drafting Readable Laws' (May 2004)51 Clarity 8.

¹⁹⁵ Sainsbury (n191) 59.

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different degrees of simplicity.¹⁹⁶ As Nazareth says ‘barking up the wrong tree is not to provide any remedy’.¹⁹⁷ The drafter should consider all modes of operation in order to fully engage the potential of section headings to assist readers. In some context, different sections heading may require different drafting approaches in order to be effective. They can sometimes be descriptive, sometimes summarizing; sometimes in question-form.

As we noted, the role of section heading about finding and understanding the information from legislation applies for all readers of legislation whether ‘primary’ of ‘official’. Especially for official interpretation, section headings assist in working out the meaning of legislation, at least as far as they may resolve ambiguities in the text of the piece of legislation.¹⁹⁸ The more difficult issue is determining the status of section headings in legislation in any jurisdiction. In our view, and having considered different approaches from different advocate of plain language, all components of legislation should be regarded as legal text. What is enacted into legislation should be the entire Act. For this reasons, all components included in legislation, for instance section headings (and other headings) should be considered an integral part of legislation as enacted.

If a piece of legislation is arranged and if the table of content, and visual aids are supplied, then a reader, by scanning the piece of legislation, can at first look, get a fairly good idea of what the subject matter is, and what the scope of the piece of legislation is.¹⁹⁹ Of course, it is not always easy to create a series of section headings which comply with such aim. All depend on the complexity of subject matter and the context.

As indicated in this comparative research, legal language for instance legislative drafting ‘involves a complex mix of history, tradition, rules, and forms’.²⁰⁰ With this

¹⁹⁶ Sainsbury (n191) 59.

¹⁹⁷ Mr Justice Nazareth, ‘Legislative Drafting: Could Our Statute Be Simpler? (1987) Statute Law Review 81, 92.

¹⁹⁸ See on pages 38-40.

¹⁹⁹ Salembier (n86) 291-292.

²⁰⁰ Anne Wagner, ‘Paper of International Conference: Clarity and Obscurity in Legal Language’, 5-9 July, 2005, Boulogne-sur-Mer (France) Université du Littoral Côte d’Opale, published in (May 2004) 51 Clarity, 32.

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regard, introduction of section headings in legislation have a vital function to perform in making legislation readable and comprehensible. Prefacing the particular section which immediately follows it, the section heading strongly affects the reader's comprehension of that provision. As discussed in this study, sections headings act collectively as a guide to the piece of legislation, and individually each section heading act as a guide to the concerned section. Collected together with other headings, they provide an important map, via the table of contents to guide readers of the piece of legislation. As we begun with our hypothesis, when section headings are cautiously used in legislation, they contributes to achieve effectiveness by helping readers of legislation find what they need to know faster, and understand it more easily.

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Use of Legislative Section Headings to Achieve Effectiveness

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